

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Amendment of Section 73.606(b),  
Table of Allotments,  
TV Broadcast Stations  
(Pueblo, Colorado)

) MM Docket No. 93-191  
) RM-8088

**RECEIVED**

AUG 20 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of

SANGRE DE CRISTO  
COMMUNICATIONS, INC.

For Extension of Time to Construct  
Television Translator K15BX  
For Reinstatement of Construction  
Permit for Television Translator  
K15BX

) File No. BMPTT-921002JE

) File No. BMPTT-911105JE

**RECEIVED**

AUG 26 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

For Extension of STA for  
Television Translator K15BX

UNIVERSITY OF SOUTHERN  
COLORADO

For Extension of Construction  
Permit

) File No. BPET-930216KE

) File No. BPET-900122KE

For Assignment of Construction  
Permit

) File No. BAPED-93 \_\_\_\_\_

For New UHF Translators at  
Grand Junction, Colorado  
Cortez-Red Mesa, Colorado  
Durango, Colorado  
Ignacio, Colorado

) File No. BPTT-930330CC

) File No. BPTT-930330CA

) File No. BPTT-930330CB

) File No. BPTT-930330CD

To the Commission:  
STOP CODE 1800

**JOINT MOTION TO CONSOLIDATE PROCEEDINGS**

The University of Southern Colorado, licensee of Television Station  
KTSC(TV), Pueblo, Colorado [the "University"], and Sangre de Cristo  
Communications, Inc., licensee of Television Station KOAA-TV, Pueblo,

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Colorado ["SCC"], submit herewith their Joint Motion to Consolidate the above-referenced proceedings for combined consideration and resolution in a decision in MM Docket No. 93-191.

On September 3, 1992, the University and SCC joined in a press release announcing a proposed intraband channel exchange between Television Station KTSC(TV), channel 8\*, Pueblo, Colorado, and Television Station KOAA-TV, channel 5, Pueblo, Colorado. On September 8, 1992, the University and SCC filed a Joint Petition for Issuance of a Notice of Proposed Rulemaking to implement the swap. On July 13, 1993, the Commission issued a Notice of Proposed Rule Making soliciting comments concerning the public interest associated with the proposal.<sup>1/</sup>

On October 5, 1992, approximately one month after the swap announcement, Pikes Peak Broadcasting Company, licensee of Television Station KRDO-TV, Colorado Springs, Colorado ["Pikes Peak"], filed an untimely petition seeking reconsideration of the Commission's grant of the University's application for a construction permit authorizing relocation of KTSC(TV)'s transmitter site. (FCC File No. BPET-900122KE).<sup>2/</sup> This proved to be the first of a continuing series of pleadings filed by Pikes Peak and by KKTU, which collaterally attacked the proposed swap. To date, more than forty pleadings have been filed in various

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1/ Notice of Proposed Rule Making, MM Docket No. 93-191, DA 93-742 (July 13, 1993).

2/ On November 4, 1992, the FCC dismissed this petition as well as a reconsideration petition subsequently filed by KKTU, Inc., licensee of Television Station KKTU, Colorado Springs, Colorado ["KKTU"]. This action did not, however, stop their attacks on the University's construction permit.

application and STA proceedings.<sup>3/</sup> These repetitive pleadings, initiated immediately following announcement of the swap, are clearly designed to delay a decision on the swap's merits by forcing the Commission to sort through reams of documents and write multiple decisions.

Despite their number and volume, these pleadings involve identical facts and issues, including among other matters, the relationship between SCC and the University; the University's financial qualifications; the University's intentions with respect to its construction permit; the validity of SCC's K15BX construction permit; and the continuing validity of the University's short-spacing waiver. All are ultimately related to the public interest merits of the proposed swap. As such, there is clearly no need for multiple decisions which would repeatedly recite the same facts and issues and reach the same conclusions. Instead, considerations of administrative efficiency dictate consolidation of the proceedings and their resolution in a single decision.

The Commission clearly has the authority to order its own proceedings. Section 303(j) of the Communications Act of 1934, as amended, authorizes the Commission to "[m]ake such regulations not inconsistent with law as it may deem necessary...to carry out the provisions of this Act," while Section

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<sup>3/</sup> A chronology of the pleadings which have been filed to date is appended as Exhibit No. 1. The pleadings filed thus far relate to the University's construction permit to relocate its transmitter site; SCC's STA to authorize rebroadcast of KTSC(TV) on its television translator K15BX granted after displacement of the University's television translator; SCC's construction permit for K15BX; and the University's applications for new television translators. Note that on March 2, 1993, the University and SCC filed a Joint Motion for Issuance of an Order to Show Cause seeking to stem this tide of obstructive repetitive pleadings.

303(r) authorizes it to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act..." 47 U.S.C. §§ 303(j), 303(r). It is, moreover, well established that administrative agencies are the masters of their own houses,<sup>4/</sup> and are free to fashion procedures which are optimally conducive to implementing their statutory mandates.<sup>5/</sup>

Here, consolidation of the referenced proceedings would clearly facilitate proper and efficient dispatch of the FCC's business. All involve allegations concerning the relationship between the University and SCC and the proposed swap. The various pleadings which have been filed are replete with essentially identical arguments and interrelated cross-references. In such circumstances, it would be a gross waste of Commission time and manpower to

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4/ See, e.g., Mobil Oil Exploration & Producing southeast, Inc. v. United Distribution Companies, 111 S.Ct. 615 (1991); FCC v. Schreiber, 381 U.S. 279 (1965); Amcor, Inc. v. Brock, 780 F.2d 897 (11th Cir. 1986); Katzson Bros., Inc. v. United States, 839 F.2d 1396 (10th Cir. 1088); FTC v. Merit System Protection Board, 672 F.2d 150 (D.C. Cir. 1982); Seacoast Anti-Pollution League v. Castle, 597 F.2d 306 (1st Cir. 1979); Natural Resources Defense Council v. SEC, 606 F.2d 1031 (D.C. Cir. 1979).

5/ Reflecting the logic inherent in consolidating proceedings involving common issues, the Commission's Rules expressly contemplate consolidation for hearing of cases involving "substantially the same issues," 47 C.F.R. § 1.227(a)(1). Pursuant thereto, the Commission has designated related applications for consolidated consideration to resolve related issues. See, e.g., KTTV Television Co., 2 RR 2d 95 (1964); TLB, Inc., 4 RR 2d 508 (1965). The Commission has likewise consolidated evidentiary and rulemaking proceedings which involve identical issues, see, e.g., California Water and Television Co., 19 RR 2d 598 (1970), and CATV certificate of compliance applications involving identical issues, see, Valley Cable Vision, Inc., 38 FCC 2d 959 (1972), recons. denied, 40 FCC 2d 191 (1973).

resolve each proceeding seriatim. Rather, the ends of efficient administration would be served by consolidated consideration and resolution.

Consolidation is likewise mandated to serve the ends of justice. The extraordinary volume and variety of KRDO-TV's and KKTV's pleadings evidence an obvious intent to delay institution of additional competition in Colorado Springs at any cost.<sup>6/</sup> Absent consolidation, this goal will be achieved: it takes far more time to write multiple decisions than to write a single decision. If these proceedings are not consolidated, and their resolution is in consequence delayed, KRDO-TV and KKTV will in effect achieve a substantive victory notwithstanding the Commission's ultimate decision. The ends of fair administration would likewise be served, for, as noted above, in this case justice delayed is effectively justice denied.

Since the proceedings all were prompted by and ultimately relate to the rulemaking proceeding, it is respectfully submitted that consolidated resolution would be best accomplished in conjunction with the Commission's decision in MM Docket No. 93-191.

### Conclusion

The University of Southern Colorado and Sangre de Cristo Communications, Inc. therefore respectfully request that the Commission

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<sup>6/</sup> Why, for example, would a "Notice of Intent to Object" be filed if not to further clutter and already littered record? Why would a broadcaster object to an STA not involving electrical interference to its own facilities?

consolidate all of the above-captioned proceedings<sup>7/</sup> for consideration in connection with the rulemaking proceedings in MM Docket No. 93-191 and issue a consolidated decision therein which resolves the issues in those proceedings.

Respectfully submitted,

UNIVERSITY OF SOUTHERN  
COLORADO

SANGRE DE CRISTO  
COMMUNICATIONS, INC.

By Wayne Coy, Jr. / SMP  
Wayne Coy, Jr.

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August 26, 1993

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<sup>7/</sup> The Commission's Notice of Proposed Rulemaking in MM Docket 93-191 appears to invite the filing of an application to assign KTSC(TV)'s construction permit. Pursuant thereto, the parties intend to file such an application in the week of August 30, 1993.

**EXHIBIT NO. 1**

## **MASTER CHRONOLOGY OF ALL PLEADINGS**

### **Date of Filing**

### **Title and Nature of Pleading**

**September 8, 1992**

**Joint Petition for Issuance of Notice of Proposed Rulemaking filed by the University of Southern Colorado (the "University") & Sangre de Cristo Communications, Inc. ("SCC")**

- Requesting the initiation of a rulemaking proposing an intra-band VHF channel swap between the University and SCC.

**October 5, 1992**

**Petition for Reconsideration filed by Pikes Peak Broadcasting Company ("Pikes Peak")**

- Requesting rescission of the Commission's grant of the University's application to relocate KTSC-TV's transmitter site to Cheyenne Mountain.

**October 8, 1992**

**Petition for Reconsideration filed by KKTV, Inc. ("KKTV")**

- Requesting rescission of the Commission's grant of the University's application to relocate KTSC-TV's transmitter site to Cheyenne Mountain.

**October 20, 1992**

**Opposition to Petition for Reconsideration filed by the University**

**October 22, 1992**

**Reply to Opposition to Petition for Reconsideration filed by Pikes Peak**

**November 19, 1992**

**Petition for Reconsideration filed by Pikes Peak**

- Requesting rescission of the Commission's grant of SCC's extension of time application for Translator K15BX, Colorado Springs, Colorado.

**November 25, 1992**

**Petition for Reconsideration filed by Pikes Peak**

- Requesting rescission of the Commission's grant of SCC's reinstatement application for Translator K15BX, Colorado Springs, Colorado



December 2, 1992	<b>Petition for Issuance of Order to Show Cause filed by Pikes Peak</b> <ul style="list-style-type: none"><li>● Requesting issuance of an Order to Show Cause why the University's Cheyenne Mountain construction permit should not be revoked.</li></ul>
December 4, 1992	<b>Petition for Issuance of Order to Show Cause filed by KKTV</b> <ul style="list-style-type: none"><li>● Requesting issuance of an Order to Show Cause why the University's Cheyenne Mountain construction permit should not be revoked.</li></ul>
December 8, 1992	<b>Consolidated Opposition to Petitions for Reconsideration filed by SCC</b>
December 18, 1992	<b>Reply to Consolidated Opposition to Petitions for Reconsideration filed by Pikes Peak</b>
January 8, 1993	<b>Joint Consolidated Opposition to Petitions for Issuance of Order to Show Cause filed by the University and SCC</b>
January 22, 1993	<b>Reply to Joint Consolidated Opposition to Petitions for Issuance of Order to Show Cause filed by Pikes Peak</b>
January 22, 1993	<b>Reply to Joint Consolidated Opposition to Petitions for Issuance of Order to Show Cause filed by KKTV</b>
February 9, 1993	<b>Petition for Reconsideration filed by Pikes Peak</b> <ul style="list-style-type: none"><li>● Requesting the rescission of the Commission's grant of special temporary authority to rebroadcast programming of KTSC(TV), Channel 5*, Pueblo, Colorado, over Translator K15BX, Colorado Springs, Colorado.</li></ul>
February 17, 1993	<b>Notice of Intent to Object filed by Pikes Peak</b>

- Declaring that Pikes Peak would oppose any application requesting extension of the outstanding Cheyenne Mountain Permit.

February 19, 1993

**Petition to Revoke and Deny CP Extension filed by Pikes Peak**

- Requesting the revocation of the Cheyenne Mountain Permit and the denial of the University's application for extension of the construction permit.

February 24, 1993

**Opposition to Petition for Reconsideration filed by SCC**

March 2, 1993

**Joint Motion for Issuance of an Order to Show Cause filed by the University and SCC**

- Requesting issuance of an order to show cause why Pikes Peak & KKTU should not be ordered to cease and desist their abuse of the FCC's processes.

March 2, 1993

**Petition to Deny Application for Extension of Construction Permit and Supplement to Petition for Issuance of Order to Show Cause Why Construction Permit Should Not Be Revoked filed by KKTU**

- Requesting the denial of the University's application for extension of the construction permit.

March 4, 1993

**Joint Opposition to Petition to Revoke and Deny CP Extension filed by the University and SCC**

March 8, 1993

**Reply to Opposition to Petition for Reconsideration filed by Pikes Peak**

March 16, 1993

**Reply to Joint Opposition to Petition to Revoke and Deny CP Extension filed by Pikes Peak**

March 16, 1993

**Opposition to Joint Motion for Issuance of Order to Show Cause filed by Pikes Peak**

March 16, 1993

**Opposition of KKTU, Inc. to Joint Motion for Issuance of an Order to Show Cause**

March 17, 1993

**Joint Opposition to KKTU Petition to Deny Application for Extension of Construction Permit and Supplement to Petition for Issuance of Order to Show Cause Why Construction Permit Should Not Be Revoked filed by the University and SCC**

March 22, 1993

**Reply of KKTU, Inc. to Joint Opposition to Petition to Deny Application of Extension of Construction Permit and Supplement to Petition for Issuance of Order to Show Cause Why Construction Permit Should Not Be Revoked**

March 23, 1993

**Amendment to Extension Application for KTSC(TV) Cheyenne Mountain construction permit filed by the University**

March 29, 1993

**Joint Consolidated Reply to Oppositions to Joint Motion for Issuance of Order to Show Cause**

April 6, 1993

**Supplement of KKTU, Inc. to Petition to Deny Application of the University of Southern Colorado for Extension of Construction Permit and Supplement to Petition for Issuance of Order to Show Cause Why Construction Permit Should Not Be Revoked**

- Requesting the dismissal of the University's amendment to its extension application, the denial of the extension application and the revocation of the permit.

April 7, 1993

**Supplement to Petition to Revoke and Deny CP Extension filed by Pikes Peak**

- Requesting the dismissal of the University's amendment to its extension application, the denial of the extension application and the revocation of the permit.

April 13, 1993

**Motion of KKTU, Inc. for Leave to File Limited Reply to Joint Consolidated Reply to Oppositions to Joint Motion for Issuance of an Order to Show Cause**

**& Limited Reply to Joint Consolidated Reply to  
Oppositions to Joint Motion for Issuance of an Order  
to Show Cause**

- Responding to suggestion that KKTU or its representatives caused the issuance of the duplicate public notice of grant of the University's application to relocate KTSC(TV)'s transmitter to Cheyenne Mountain.

April 21, 1993

**Opposition to Supplement of KKTU to Petition to  
Deny and Petition for Issuance of Order filed by the  
University and SCC**

April 22, 1993

**Joint Opposition to Pikes Peak Supplement to Petition  
to Revoke and Deny CP Extension filed by the  
University and SCC**

April 28, 1993

**Comments to Limited Reply of KKTU to Joint  
Consolidated Reply to Oppositions to Joint Motion for  
Issuance of an Order to Show Cause filed by the  
University and SCC**

May 14, 1993

**Petition to Deny University's Applications for New  
UHF Translator Stations at Grand Junction, Cortez-  
Red Mesa, Durango and Ignacio, Colorado filed by  
Pikes Peak**

- Requesting denial of the University's television translator applications or, in the alternative, that the FCC hold any further consideration of the applications in abeyance pending resolution of the other proceedings involving the University and initiated earlier by Pikes Peak

May 10, 1993

**Supplement to Petition to Revoke and Deny CP  
Extension filed by Pikes Peak**

- Requesting the denial of the University's extension application.

May 19, 1993	<b>Joint Opposition to Supplement to Petition to Revoke and Deny CP Extension filed by the University and SCC</b>
May 25, 1993	<b>Opposition to Petition to Deny filed by the University</b>
June 2, 1993	<b>Reply to Joint Opposition to Supplement to Petition to Revoke and Deny CP Extension filed by Pikes Peak</b>
July 6, 1993	<b>Notice of Intent to Object filed by Pikes Peak</b>
July 9, 1993	<b>Opposition to Extension of STA filed by Pikes Peak</b> <ul style="list-style-type: none"><li>● Requesting the denial of SCC's request for extension of special temporary authority to rebroadcast programming of KTSC(TV), Channel 5*, Pueblo, Colorado over Translator K15BX, Colorado Springs, Colorado.</li></ul>
July 22, 1993	<b>Response to Opposition filed by SCC</b>
August 16, 1993	<b>Petition to Deny University's Applications for New UHF Translator Stations at Grand Junction, Cortez-Red Mesa, Durango and Ignacio, Colorado filed by Pikes Peak</b> <ul style="list-style-type: none"><li>● Requesting denial of the University's television translator applications or, in the alternative, that the FCC hold any further consideration of the applications in abeyance pending resolution of the other proceedings involving the University and initiated earlier by Pikes Peak</li></ul>

## **CERTIFICATE OF SERVICE**

This will certify that the foregoing "Joint Motion to Consolidate Proceedings" was sent this 26th day of August, 1993, via first class United States mail to the following:

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